

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LEWIS E. CODY,

Petitioner

v.

JAMES L. GRACE, ET AL.,

Respondents

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CIVIL NO. 4: CV-05-851

(Judge Jones)

ORDER

June 2, 2005

Background

Presently pending before this Court is Lewis E. Cody's ("Petitioner" or "Cody") Petition for Writ of Habeas Corpus ("the Petition"), filed pursuant to 28 U.S.C. § 2254. The Petition presents grounds attacking either his conviction or the sentence imposed, or both. Cody's sentence was imposed by the Court of Common Pleas of Union County, Pennsylvania. In accordance with United States v. Miller, 197 F.3d 644 (3d Cir. 1999) and Mason v. Meyers, 208 F.3d 414 (3d Cir. 2000), the Petitioner is advised that: (1) he can have the Petition ruled on as filed, that is, as a § 2254 petition for writ of habeas corpus and heard as such, but lose his ability to file a second or successive petition absent certification by the

Court of Appeals, or (2) withdraw his Petition and file one all-inclusive § 2254 petition within the one-year statutory period prescribed by the Antiterrorism Effective Death Penalty Act (“AEDPA”). However, if the Petitioner elects to withdraw the instant petition in order to file one all-inclusive petition, he is forewarned that the AEDPA’s one year statute of limitations might bar the filing of any such successive petition.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Petitioner shall within forty-five (45) days of the date of this Order complete and file with the Court the attached Notice of Election.
2. Failure of Petitioner to comply with this Order will result in the Court ruling on the motion, document or pleading as captioned.

s/ John E. Jones III
JOHN E. JONES III
United States District Judge

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NOTICE OF ELECTION

I, _____, petitioner in the above-captioned action, have read the Order of Court which accompanied this form notice. Pursuant to that order, I elect to proceed in this action as follows:

___ I have labeled my Petition as a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. I choose to have the court rule on my Petition as filed. I understand that I may be forever barred from presenting in federal court any claim not presented in this Petition. I further understand that by doing so I lose my ability to file a second or successive petition absent certification by the Court of Appeals, and that the potential for relief is further limited in a second or successive Petition.

___ I have labeled my Petition as a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254. I choose to withdraw the Petition so that I may file one, all-inclusive Petition under 28 U.S.C. § 2254 within the one-year limit for filing such a Petition. I understand that the AEDPA statute of limitations might bar the filing of any such successive

Petition.

YOUR ELECTION ON THIS FORM, AS WELL AS THE FAILURE TO MAKE AN ELECTION, WILL BE BINDING ON YOU AS RELATES TO YOUR LITIGATION IN FEDERAL COURT OF ANY CLAIM RELATED TO THE CUSTODY YOU HAVE CHALLENGED. READ CAREFULLY THE ORDER ACCOMPANYING THIS FORM NOTICE OF ELECTION.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____.
(Date)

(Signature of Petitioner)